U.S. Department of Justice
Criminal Division
Asset Forfeiture and Money Laundering Section

Quick Release

A Monthly Survey of Federal Forfeiture Cases

Volume 11, Number 5 **May 1998**

Money Laundering / Probable Cause / Standing

- **If the Government has probable cause to believe that a bank account is used exclusively for money laundering, it does not have to establish a separate money laundering nexus for each deposit into the account.**

- **Claimant who transferred money to a bank account no longer has title to the money and therefore lacks standing to contest the forfeiture; it makes no difference that the account was frozen by the Government when the deposit was made.**

In the course of a money laundering investigation, the Government established probable cause to believe that a certain bank account was being used to launder drug money, and that all of the money in the account was involved in the money laundering offense. Based on this probable cause, agents obtained an arrest warrant *in rem* and served it on the bank, thus, freezing the account; the warrant, however, directed the bank to allow additional deposits to be credited to the account for a period of eight days. The day after the seizure, Claimant transferred $270,000 to the seized account.

The Government's section 981 forfeiture complaint sought forfeiture of all of the money in the account, including the $270,000. Claimant filed a claim asserting: (1) that the Government lacked probable cause to forfeit the $270,000 that was deposited after the seizure; and (2) that as to that money, she was an innocent owner of funds that came from a legitimate source. The Government responded that its probable cause evidence applied to all money in the bank account, and that in any event Claimant lacked standing to contest the civil forfeiture action. In a lengthy, well-researched opinion, a magistrate judge agreed with the Government and recommended that the Government's motion to dismiss the claim be granted.

On the first point, the court held that, if the Government's evidence established probable cause to believe that *all* of the money in a bank account is involved in a money laundering offense, the Government is not required to establish a separate basis for forfeiture of a particular sum of money that came from a particular source or was deposited at a particular time. In this case, there was ample evidence that drug dealers were using the subject bank account repeatedly and over an extended period of time to launder drug proceeds, and that all

United States v. $86,020.00 in U.S. Currency, ___F. Supp.___, No. 96-CV-125-TUC-ACM, 1997 WL _____ (D. Ariz. Nov. 12, 1997) Feb. 1998

United States v. $133,735.30 Seized From U.S. Bancorp Brokerage Account, ___F. 3d. ___, No. 97-35267, 1998 WL 125047 (9th Cir. Mar. 23, 1998) Apr. 1998

United States v. $189,825.00 in United States Currency, No. 96-CV-1084-J (N.D. Okla. Feb. 11, 1998) (unpublished) Apr. 1998

United States v. $201,700.00 in U.S. Currency, No. 97-0073-CIV-HIGHSMITH (S.D. Fla. Jan. 5, 1998) (unpublished) Feb. 1998

United States v. $206,323.56 in U.S. Currency, ___ F. Supp. ___, No. CIV-A-6:97-0635, 1998 WL 139520 (S.D.W. Va. Mar 23, 1998) May 1998

United States v. Akins, ___F. Supp. ___, No. 3:97-00068, 1998 WL 84597 (M.D. Tenn. Feb. 23, 1998) Apr. 1998

U.S. v. All Assets of Revere Armored, Inc., 131 F.3d 132, 1997 WL 794460 (2d Cir. 1997) (unpublished) (Table) Feb. 1998

United States v. All Funds in "The Anaya Trust" Account, No. C-95-0778, 1997 WL 578662 (N.D. Cal. Aug. 26, 1997) (unpublished) Jan. 1998

United States v. All Funds on Deposit, No. CIV-A-97-0794, 1998 WL 32762 (E.D. La. Jan. 28, 1998) (unpublished) Mar. 1998

United States v. An Antique Platter of Gold, Civ. No. 95-10537, 1997 WL 812174 (S.D.N.Y. Nov. 14, 1997) (unpublished) Jan. 1998

United States v. Any and All Funds, No. C-97-931R (W.D. Wash. Apr. 1, 1998) May 1998

United States v. Berg, ___ F. Supp. ___, No. 97-CRIM-0866 (LAK), 1998 WL 161008 (S.D.N.Y. Apr. 7, 1998) May 1998

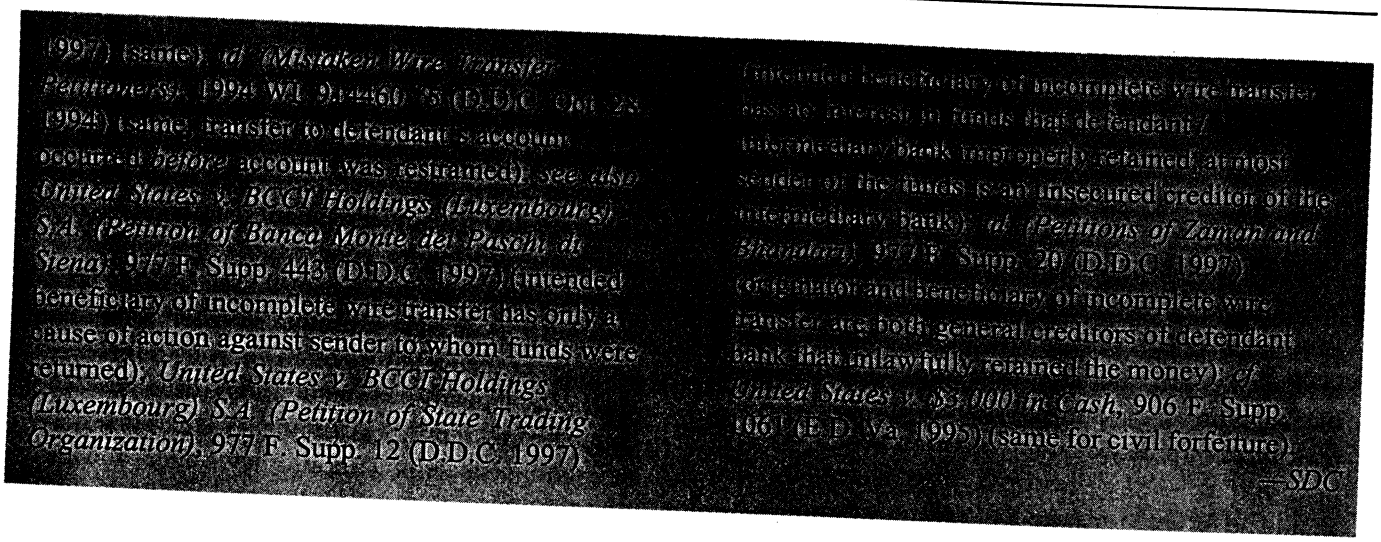
United States v. Barnette, 129 F.3d 1179 (11th Cir. 1997) Jan. 1998

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Bank Austria), ___F. Supp. ___, No. 91-0655, 1998 WL 87418 (D.D.C. Feb. 23, 1998) Apr. 1998

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Amjad Awan), ___ F. Supp. ___, No. 91-0655 (JHG), 1998 WL 199700 (D.D.C. Apr. 16, 1998) May 1998

United States v. Colon, ___F. Supp. ___, No. CRIM-94-366(PG), 1998 WL 81633 (D.P.R. Feb. 20, 1998) Apr. 1998

United States v. Contents of Brokerage Account No. 519-40681-1-9-524, No. M9-150, 1997 WL 786949 (S.D.N.Y. Dec. 23, 1997) (unpublished) Feb. 1998



(1997) (same); *id. (Mistaken Wire Transfer Petitioners)*, 1996 WL 940460 *3 (D.D.C. Oct. 28, 1996) (same; transfer to defendant's account occurred *before* account was restrained); *see also United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Banco Monte dei Paschi di Siena)*, 977 F. Supp. 443 (D.D.C. 1997) (intended beneficiary of incomplete wire transfer has only a cause of action against sender to whom funds were returned); *United States v. BCCI Holdings (Luxembourg) S.A. (Petition of State Trading Organization)*, 977 F. Supp. 12 (D.D.C. 1997) (intended beneficiary of incomplete wire transfer has no interest in funds that defendant / intermediary bank improperly retained at most sender of the funds is an unsecured creditor of the intermediary bank); *id. (Petitions of Zamon and Bhandari)*, 977 F. Supp. 20 (D.D.C. 1997) (originator and beneficiary of incomplete wire transfer are both general creditors of defendant bank that unlawfully retained the money); *cf. United States v. $5,000 in Cash*, 906 F. Supp. 1061 (E.D. Va. 1995) (same for civil forfeiture).

—*SDC*

Section 2255 / Attorneys' Fees

■ **District court rejects notion that privately retained defense attorney must offer to forfeit his fee to secure a lesser sentence for his client in order to avoid a conflict of interest.**

Defendant filed a section 2255 petition asserting that his defense attorney had a conflict of interest. The alleged conflict was that the attorney could have agreed to forfeit his fee in order to secure Defendant a lesser sentence in his criminal case. The district court denied the petition.

If this situation were truly a conflict of interest, the court said, then every paid defense attorney in every criminal forfeiture case would be disqualified, and every defendant would have to be represented by the public defender. That is not the law, the court held, at least where there is no showing that forfeiture of the attorney's fee would have resulted in a lesser term of incarceration.

—*SDC*

United States v. Martinson, No. CIV-97-3030, 1998 WL 111801 (E.D. Pa. Mar. 4, 1998) (unpublished). Contact: AUSA Emily McKillip, APAE02(emckilli).

Comment: The court's suggestion that the attorney might have had a conflict of interest if an agreement to forfeit his fee would have resulted in a lesser term of incarceration for his client poses the parallel ethical issue of whether it would have been appropriate for the prosecutor to seek such an agreement in connection with a plea. The relevant Department of Justice policy restricts the use of forfeitable or nonforfeitable assets (including forfeitable and nonforfeitable attorneys' fees) as bargaining tools for negotiating pleas. In short, the policy prohibits the prosecutor from offering to dismiss criminal charges or to reduce the term of incarceration in return for the forfeiture of property. It also prohibits the prosecutor from offering to forego the forfeiture of property in order to coerce a guilty plea. *See Asset Forfeiture Policy Manual* (1996), Chap. 3, Sec. I.A.6, at p. 3 — 5.

If the attorney's fee is a forfeitable asset, it should be forfeited, but not in connection with a plea agreement concerning the attorney's client. Linking the forfeiture of the attorney's fee to plea

Alphabetical Index

The following is an alphabetical listing of cases that have appeared in the *Quick Release* during 1998. The issue in which the case summary was published follows the cite.

Circuit recently ruled in *Small* that the appropriate remedy for inadequate notice was a hearing on the merits. The court found that, in the two cases in which administrative forfeitures were vacated for deficient notice after the statute of limitations had run, both courts had ruled that the appropriate remedy was a hearing on the merits notwithstanding the expiration of the statute of limitations. *See Boero*, 111 F.3d at 307; *United States v. Marolf*, 973 F. Supp. 1139, 1151 (C.D. Cal. 1997) (summarized in the August 1997 issue of the *Quick Release*). In the absence of any contrary authority, the court followed *Boero* and *Marolf* and ruled that it would consider the merits of the case to determine whether the seized money should be forfeited or returned.

—*JHP*

Kadonsky v. United States, No. CA-3:96-CV-2969-BC, 1998 WL 119531 (N.D. Tex. Mar. 6, 1998) (unpublished). Contact: AUSA Brock Stevenson, ATXND01(bstevens).

Res Judicata

- **Civil action against seizing agency to recover forfeited property is barred by *res judicata* where the plaintiff's claim in an earlier civil forfeiture was denied on the merits.**

- **Dismissal of a civil forfeiture claim for failure to comply with Rule C(6) is a judgment on the merits for *res judicata* purposes.**

Appellants were brothers of a convicted drug trafficker who purchased several dairy farms as well as animals and farming equipment with proceeds from the illegal drug trade. The Government filed two separate in rem civil forfeiture proceedings against this property. In the first civil forfeiture action, U.S. marshals served both of the brothers with the pleadings. In response, the brothers filed claims requesting protection of their alleged interests in the defendant properties and an answer to the Government's complaint. The district court judge dismissed their claims because they failed to file their claims within the 10-day claim period and their answer within the 20-day answer period established in Rule C(6) of the Supplemental Rules for Certain Admiralty and Maritime Claims. This ruling was affirmed on appeal.

In the second civil forfeiture proceeding, U.S. marshals served the brothers with the pleadings a few days after the filing of the action. One of the brothers failed to respond within the statutory limits. The other never filed either a claim or an answer. Consequently, the district court dismissed their claims, finding that the brothers lacked standing to challenge the forfeiture of the properties. Despite these judgments against them, the brothers filed the instant action against the Drug Enforcement Administration (DEA), claiming an interest in the forfeited properties. The district court dismissed their complaint on DEA's motion for summary judgment. The **First Circuit** affirmed.

The panel noted that, under the doctrine of "claim preclusion," a claim is precluded if three requirements are met: (1) a final judgment on the merits in an earlier action; (2) a sufficient identity between the parties in the two suits; and (3) a sufficient identity of the causes of action in the two suits. It noted that the brothers did not dispute the presence of the second and third elements of claim preclusion in this case but argued instead that in the prior proceedings they did not have a full and fair opportunity to have their claims adjudicated on the merits.

Stay Pending Appeal

United States v. $13,570.00, No. CIV-A-97-1997, 1998 WL 37519 (E.D. La. Jan. 29, 1998)(unpublished) — Mar. 1998

United States v. $14,876.00, No. CIV-A-97-1967, 1998 WL 37522 (E.D. La. Jan. 29, 1998)(unpublished) — Mar. 1998

United States v. 1993 Bentley Coupe, No. CIV-A-93-1282, 1997 WL 803914 (D.N.J. Dec. 30, 1997) (unpublished) — Mar. 1998

Sting Operation

United States v. All Funds on Deposit, No. CIV-A-97-0794, 1998 WL 32762 (E.D. La. Jan. 28, 1998) (unpublished) — Mar. 1998

Structuring

United States v. Funds in the Amount of $170,926.00, 985 F. Supp. 810 (N.D. Ill. Nov. 25, 1997) — Jan. 1998

Substitute Assets

- ***United States v. Berg***, ___ F. Supp. ___, No. 97-CRIM-0866 (LAK), 1998 WL 161008 (S.D.N.Y. Apr. 7, 1998) — May 1998

United States v. Parise, No. 96-273-01, 1997 WL 431009 (E.D. Pa. July 15, 1997) (unpublished) — Jan. 1998

United States v. Gotti, ___F. Supp. ___, No. 98-CR-42(BDP), 1998 WL 116631 (S.D.N.Y. Mar. 12, 1998) — Apr. 1998

Summary Judgment

United States v. $86,020.00 in U.S. Currency, ___F. Supp.___, No. 96-CV-125-TUC-ACM, 1997 WL _____ (D. Ariz. Nov. 12, 1997) — Feb. 1998

United States v. $201,700.00 in U.S. Currency, No. 97-0073-CIV-HIGHSMITH (S.D. Fla. Jan. 5, 1998) (unpublished) — Feb. 1998

- ***United States v. $206,323.56 in U.S. Currency***, ___ F. Supp. ___, No. CIV-A-6:97-0635, 1998 WL 139520 (S.D.W. Va. Mar 23, 1998) — May 1998

Ivester v. Lee, ___ F. Supp. ___, No. 4:96-CV-1807, 1998 WL 34865 (E.D. Mo. Jan. 26, 1998) — Mar. 1998

because the statute of limitations barred the Government from initiating a civil forfeiture action against the property. —*HSH*

United States v. Mulligan, ___ F.R.D. ___, No. 88-CR-90020, 1998 WL 113322 (E.D. Mich. Mar. 13, 1998). Contact: AUSA J. King, AMIE02(jking).

Rule 41(e) / Statute of Limitations

■ **Statute of limitations applicable to Rule 41(e) petitions is six years under 28 U.S.C. § 2401. Ignorance of the applicable statute of limitations is not a ground for relief under Rule 60(b).**

A *pro se* petitioner filed a Rule 41(e) motion for the return of property seized by the Drug Enforcement Administration in 1988. The district court dismissed his motion. Thereafter, the petitioner filed a motion for relief from that judgment under Fed. R. Civ. P. 60(b), which permits the court to vacate a final judgment where, for example, mistake or excusable neglect has occurred or where new evidence has been discovered. That motion, however, was also denied.

The court dismissed the Rule 41(e) petition as time-barred by the applicable six-year statute of limitations, 28 U.S.C. § 2401. In his Rule 60(b) motion, petitioner sought relief on a variety of grounds, including his and his lawyer's ignorance of the law in delaying the initial filing of his Rule 41(e) petition, his *pro se* status as an incarcerated plaintiff, newly discovered evidence and the doctrine of laches.

The court rejected each of these claims. First, the court noted that in the Rule 60(b) motion, the petitioner did not claim that mistake or excusable neglect had prevented him from presenting evidence in opposition to the United States' defense that his original Rule 41(e) petition was time-barred. Rather, the petitioner argued simply that mistakes or neglect explained the initial delay in filing the Rule 41(e) petition. The court stated that this argument should have been made earlier, but was not. In any event, however, the court noted that erroneous advice of counsel cannot toll the statute of limitations, stating that ignorance of the applicable statute of limitations is not the kind of mistake or excusable neglect contemplated in Rule 60(b).

The court also dismissed petitioner's argument that he now had additional facts that were not before the court when it dismissed the Rule 41(e) petition initially. The court noted that this argument was simply a reargument of petitioner's claims of attorney error.

Lastly, the court noted that the petitioner had misunderstood the doctrine of laches, which is an equitable defense and not a means to avoid the applicable statute of limitations. In the instant case, the doctrine of laches did not apply. —*JRP*

Corinthian v. United States, No. CV-96-945 (CPS) (E.D.N.Y. Mar. 17, 1998) (unpublished). Contact: AUSA Michael Goldberger, ANYE12(mgoldber).

Right to Counsel

United States v. Salemme, 985 F. Supp. 197 (D. Mass. 1997) — Feb. 1998

RICO

United States v. DeFries, 129 F.3d 1293 (D.C. Cir. 1997) — Jan. 1998

Rule 41(e)

- ***Corinthian v. United States***, No. CV-96-945 (CPS) (E.D.N.Y. Mar. 17, 1998 (unpublished) — May 1998

In the Matter of the Seizure of One White Jeep Cherokee, ___ F. Supp. ___, No. 4-97-M-0212, 1998 WL 25685 (S.D. Iowa Jan. 20, 1998) — Mar. 1998

In re: U.S. Currency, $844,520.00 v. United States, 136 F.3d 581 (8th Cir. 1998) — Apr. 1998

United States v. Moloney, 985 F. Supp. 358 (W.D.N.Y. 1997) — Feb. 1998

- ***United States v. Mulligan***, ___ F.R.D. ___, No. 88-CR-90020, 1998 WL 113322 (E.D. Mich. Mar. 13, 1998) — May 1998

Rule 48(a)

United States v. Ruedlinger, Nos. 97-40012-01-RDR, 1997 WL 808662 (D. Kan. Dec. 15, 1997) (unpublished) — Mar. 1998

Safe Harbor

Lopez v. First Union National Bank, 129 F.3d 1186 (11th Cir. 1997), *rev'g* 931 F. Supp. 86 (S.D. Fla. 1996) — Jan. 1998

Section 1983

- ***McFadden v. County of Nassau***, No. CV-97-4146, 1998 WL 151419 (E.D. N.Y. Mar. 26, 1998) (unpublished) — May 1998

Section 2255

- ***United States v. Martinson***, No. CIV-97-3030, 1998 WL 11801 (E.D. Pa. Mar. 4, 1998) (unpublished) — May 1998

Section 853(a)

United States v. Holmes, 133 F.3d 918 (4th Cir. 1998) (Table) — Mar. 1998

Summary Judgment / Probable Cause

- **Government's motion for summary judgment granted where Government established probable cause that money seized from automobile had a substantial connection with illegal drug trafficking and where claimant offered no supporting evidence that money was legitimate.**

- **Even if seizure were illegal, Fourth Amendment does not require dismissal of forfeiture action.**

A deputy sheriff pulled over Claimant for speeding. When Claimant stepped out of the automobile to look for the registration, the sheriff noticed a large bulge in Claimant's front pocket. Fearing for his personal safety, the officer frisked Claimant and found a large amount of cash. Thereafter, Claimant consented to a dog sniff of the car.

The dog discovered a bag in the tailgate of the car which was found to contain a large amount of currency in rubber-banded bundles. Two loaded semi-automatic weapons and a small baggie of marijuana were also found. Claimant attempted to flee, but was apprehended. Later, a passenger in the car told police that Claimant had been buying drugs in Florida and selling them in Cleveland for over two years, and that Claimant had lots of cash, cars and houses, but without an apparent job. Based on this evidence, the Government filed a forfeiture action against the cash.

Claimant moved to dismiss the forfeiture action on the ground that the search and seizure were illegal. He also claimed that the money came from a legitimate source. The Government argued alternatively that the seizure was not illegal, but even if it were, the Fourth Amendment would not necessarily require dismissal of the forfeiture action. Noting that the Fourth Circuit had not addressed the issue of requiring dismissal, the district court stated that it would follow other circuits and hold that illegal seizure itself does not preclude forfeiture. The court also held that the seizure of the cash was not unlawful.

Finally, the court held that the Government had established probable cause that the money had a substantial connection with illegal drug trafficking, and was thus subject to forfeiture. Despite Claimant's explanation that the money was from employment, lottery winnings and legalized gambling, the Claimant failed to provide the court with evidence supporting that explanation. Accordingly, the court held that there was no genuine issue of fact for trial and granted the Government's summary judgment motion. —*JRP*

United States v. $206,323.56 in U.S. Currency, ___ F. Supp. ___, No. Civ. A. 6:97-0635, 1998 WL 139520 (S.D. W. Va. Mar. 23, 1998). Contact: AUSA Betty Pullin, AWVS01(bpullin).

Conflict of Interest / Parallel Proceedings

- **Second Circuit says the same law firm should not represent a criminal defendant and a third-party claimant in a related civil forfeiture, absent a waiver of any conflict of interest.**

The Government filed a criminal action against a defendant in an alien smuggling case and a parallel civil forfeiture against the automobile that was used to commit the offense. The same law firm represented

Pre-judgment Interest

United States v. $133,735.30 Seized From U.S. Bancorp Brokerage Account, ___F. 3d. ___, No. 97-35267, 1998 WL 125047 (9th Cir. Mar. 23, 1998) — Apr. 1998

Probable Cause

- ***United States v. U.S. Currency ($199,710.00)***, No. 96-CV-241 (ERK) (RML) (E.D.N.Y. Mar. 20, 1998 — May 1998

United States v. 657 Acres of Land in Park County, 978 F. Supp. 999 (D. Wyo. 1997) — Jan. 1998

United States v. 863 Iranian Carpets, 981 F. Supp. 746 (N.D.N.Y. 1997) — Jan. 1998

United States v. $13,570.00, No. CIV-A-97-1997, 1997 WL 722947 (E.D. La. Nov. 18, 1997) (unpublished) — Jan. 1998

United States v. $14,876.00, No. CIV-A-97-1967, 1997 WL 722942 (E.D. La. Nov. 18, 1997) (unpublished) — Jan. 1998

- ***United States v. $40,000 in U.S. Currency***, ___ F. Supp. ___, No. CIV-97-1911 (SEC), 1998 WL 139514 (D.P.R. Mar. 11, 1998) — May 1998

United States v. $86,020.00 in U.S. Currency, ___F. Supp.___, No. 96-CV-125-TUC-ACM, 1997 WL _____ (D. Ariz. Nov. 12, 1997) — Feb. 1998

United States v. $201,700.00 in U.S. Currency, No. 97-0073-CIV-HIGHSMITH (S.D. Fla. Jan. 5, 1998) (unpublished) — Feb. 1998

- ***United States v. $206,323.56 in U.S. Currency***, 989 F. Supp. 1465 (S.D.W. Va. 1998) — May 1998

United States v. One 1980 Cessna 441 Conquest II Aircraft, ___ F. Supp. ____, No. CIV-97-2539, 1997 WL 81703 (S.D. Fla. Dec. 16, 1997) — Mar. 1998

United States v. Real Property Located at 22 Santa Barbara Drive, 121 F.3d. 719 (9th Cir. 1997) (unpublished) (Table) — Mar. 1998

United States v. Akins, ___F. Supp. ___, No. 3:97-00068, 1998 WL 84597 (M.D. Tenn. Feb. 23, 1998) — Apr. 1998

Post and Walk

United States v. 408 Peyton Road, 112 F.3d 1106 (11th Cir. 1997), *reh'g en banc ordered*, 133 F.3d 1378 (11th Cir. 1998) — Feb. 1998

Proceeds

United States v. Jarrett, 133 F.3d 519 (7th Cir. 1998) — Feb. 1998

The court granted the Government's motion as to the (l)(6)(A) claim, but denied it as to the (l)(6)(B) theory. With respect to the first theory, the court agreed with the Government that the purchase money was the defendant's property, not the employee's. Because, at the time of the transaction, the defendant was engaged in racketeering activity that rendered all of its assets subject to forfeiture, the money in its bank account, and any property traceable to it (the condominium), were already forfeitable to the Government under the relation back doctrine before any money was withdrawn from the account. Because any interest the employee acquired in the money (or the condominium) occurred *after* the property became subject to forfeiture, the employee could not state a claim under section (l)(6)(A).

With respect to subsection (l)(6)(B), the Government conceded that a person who receives funds from a defendant during the time the defendant is committing criminal acts is protected from forfeiture by the bona fide purchaser provision. In other words, the bona fide purchaser provision cancels out the effect of the relation back doctrine. *See* 18 U.S.C. § 1963(c). But in this case, the Government argued, the employee could not be considered a bona fide purchaser because he was a convicted defendant in a related case, and was named as a participant in several of the acts of racketeering constituting the defendant's RICO offense.

The court acknowledged the strength of the Government's argument, but held that a person's status as a co-defendant was not sufficient, as a matter of law, to negate a bona fide purchaser defense under subsection (l)(6)(B). For purposes of a motion to dismiss, the factual allegations set forth in a petition filed in the ancillary proceeding must be assumed to be true. Because the employee denied that he had any knowledge that the money in the defendant's bank account was subject to forfeiture, he had stated a valid claim under subsection (l)(6)(B). His status as a convicted defendant who may well have had knowledge of his employer's illegal acts was a factual issue that the Government would have to assert in an evidentiary hearing or in a motion for summary judgment. —*SDC*

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Amjad Awan), ___ F. Supp. ___, No. 91-0655 (JHG), 1998 WL 199700 (D.D.C. Apr. 16,1998). Contact: AFMLS Assistant Chief Stefan D. Cassella, CRM20(scassell), or AUSA Robert Dalton, ATXE01(bdalton).

Comment: The claimant in this case testified in a related criminal case under a grant of immunity. One of his objections to the criminal forfeiture was that the Government used his immunized testimony to obtain the forfeiture order. In an earlier decision in the same case, the district court held that it must conduct a *Kastigar* hearing to determine if that was the case. *United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Amjad Awan)*, 980 F. Supp. 529 (D.D.C. 1997). The Government moved for reconsideration of that decision, arguing that the criminal forfeiture order applied to the defendant, not the claimant, and that therefore the use of the claimant's immunized testimony to obtain the forfeiture order would be irrelevant.

In the instant decision, the court, without discussion, stated that the Government's arguments "have merit," and granted the motion for reconsideration. In light of its disposition of the Government's motion to dismiss on the merits, the court felt it unnecessary to address the *Kastigar* issue any further. —*SDC*

Jurisdiction

United States v. All Funds in "The Anaya Trust" Account, No. C-95-0778, 1997 WL 578662 (N.D. Cal. Aug. 26, 1997) (unpublished) — Jan. 1998

Jury Trial

United States v. Holmes, 133 F.3d 918 (4th Cir. 1998) (Table) — Mar. 1998

Laches

- ***United States v. Mulligan***, ___ F.R.D. ___, 1998 WL 113322 (E.D. Mich. Mar. 13, 1998) — May 1998

Money Laundering

United States v. 657 Acres of Land in Park County, 978 F. Supp. 999 (D. Wyo. 1997) — Jan. 1998

United States v. All Funds in "The Anaya Trust" Account, No. C-95-0778, 1997 WL 578662 (N.D. Cal. Aug. 26, 1997) (unpublished) — Jan. 1998

United States v. Funds in the Amount of $170,926.00, 985 F. Supp. 810 (N.D. Ill. 1997) — Jan. 1998

United States v. All Funds on Deposit, No. CIV-A-97-0794, 1998 WL 32762 (E.D. La. Jan. 28, 1998) (unpublished) — Mar. 1998

United States v. Real Property Located at 22 Santa Barbara Drive, 121 F.3d. 719 (9th Cir. 1997) (unpublished) (Table) — Mar. 1998

- ***United States v. U.S. Currency ($199,710.00)***, No. 96-CV-241 (ERK) (RML) (E.D.N.Y. Mar. 20, 1998 — May 1998

United States v. $66,020.00 in United States Currency, No. A96-0186-CV(HRH) (D. Alaska Feb. 23, 1998) (unpublished) — Apr. 1998

Motion *in Limine*

United States v. Palumbo Bros., Inc, No. 96-CR-613, 1998 WL 67623 (N.D. Ill. Feb. 3, 1998) (unpublished) — Apr. 1998

Motion for Return of Seized Property

United States v. Ruedlinger, No. 97-40012-01-RDR, 1997 WL 808662 (D. Kan. Dec. 15, 1997) (unpublished) — Mar. 1998

The appellate court determined that BATF did not have to follow the notice and comment procedure because the rule was "interpretive" rather than "legislative." It held that the rule was constitutional because it was a fair and reasonable interpretation of the pertinent statute.

However, it also held that 19 U.S.C. §1490, as amended in 1993, does not permit the seizure of merchandise without the owner's permission. It explained that USCS could have seized the guns under 19 U.S.C. §1595a (assuming grounds existed for doing so), but that must be done pursuant to the administrative forfeiture procedures set forth at 19 U.S.C. §§1600-1619, which Customs did not follow. It ordered USCS to either initiate proper administrative forfeiture procedures or return the guns to plaintiff. —*BB*

Interport Incorporated v. Magaw, 135 F.3d 826 (D.C. Cir. 1998), *aff'g* 923 F. Supp. 242 (D.D.C. 1996). Contact: AUSA Rudy Contreras, ADC11(rcontrer).

Standing

- **Claimant lacks standing to contest the forfeiture of his residence if he has conveyed title to the property to a third party.**

- **Notwithstanding a person's occupancy and former ownership of real property, he lacks standing if state law does not recognize ownership interests of persons whose names do not appear on the deed.**

The Government filed a civil forfeiture action against a residence where Claimant had lived for 19 years. Claimant at one time was also the owner of the property, but some years ago, he transferred title to the property to his father. (The opinion suggests that this was part of a bankruptcy fraud scheme in which Claimant was attempting to hide his assets.) When Claimant filed a claim in the forfeiture case, the Government filed a motion to dismiss for lack of standing.

The court granted the motion to dismiss. To contest a forfeiture, the court held, a claimant must prove by a preponderance of the evidence that he has an interest in the property as a matter of state law. Under Oregon law, a person has no legal interest in real property unless his name appears on the deed. Because Claimant deeded the property to his father, he no longer had the requisite interest and thus did not have standing to contest the forfeiture.

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■ Innocent Owner

The **Eighth Circuit** affirmed the denial of an innocent owner claim on the ground that the claimant-owner of the property was a frequent visitor to the premises — which were occupied by the claimant's brother — and that "it was obvious to an ordinary person [that] the property was used for drugs." The district court's factual finding that the claimant had knowledge of the illegal activities was entitled to deference in the absence of clear error.

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■ Section 1983

A prisoner filed an *in forma pauperis* civil rights action under 42 U.S.C. § 1983 against state authorities complaining of the illegal seizure and forfeiture of various items of personal property. The district court dismissed the action after finding that the prisoner had previously filed at least three *in forma pauperis* actions that were dismissed as frivolous. Under the Prison Litigation Reform Act of 1996, prisoners are limited to three such actions.

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Perpetuating the split among the district courts in the Second Circuit, a district court holds that pretrial restraint of substitute assets is permissible under *United States v. Regan*, 858 F.2d 115 (2d Cir. 1988). The same court reached the same conclusion in another case, *United States v. Bellomo*, 954 F. Supp. 630 (S.D.N.Y. 1997), but two other district courts disagreed. *See United States v. Gigante*, 948 F. Supp. 279 (S.D.N.Y. 1996) (distinguishing *Regan*, pretrial restraint *not* authorized in the Second Circuit); *United States v. Gotti*, ___ F. Supp. ___, 1998 WL 116631 (S.D.N.Y. Mar. 12, 1998) (same). The *Gotti* case is likely to be appealed to the Second Circuit.

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The appellate court determined that BATF did not have to follow the notice and comment procedure because the rule was "interpretive" rather than "legislative." It held that the rule was constitutional because it was a fair and reasonable interpretation of the pertinent statute.

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Interport Incorporated v. Magaw, 135 F.3d 826 (D.C. Cir. 1998), *aff'g* 923 F. Supp. 242 (D.D.C. 1996). Contact: AUSA Rudy Contreras, ADC11(rcontrer).

Standing

- **Claimant lacks standing to contest the forfeiture of his residence if he has conveyed title to the property to a third party.**

- **Notwithstanding a person's occupancy and former ownership of real property, he lacks standing if state law does not recognize ownership interests of persons whose names do not appear on the deed.**

The Government filed a civil forfeiture action against a residence where Claimant had lived for 19 years. Claimant at one time was also the owner of the property, but some years ago, he transferred title to the property to his father. (The opinion suggests that this was part of a bankruptcy fraud scheme in which Claimant was attempting to hide his assets.) When Claimant filed a claim in the forfeiture case, the Government filed a motion to dismiss for lack of standing.

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Jurisdiction

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United States v. Real Property Located at 22 Santa Barbara Drive, 121 F.3d. 719 (9th Cir. 1997) (unpublished) (Table) — Mar. 1998

- ***United States v. U.S. Currency ($199,710.00)***, No. 96-CV-241 (ERK) (RML) (E.D.N.Y. Mar. 20, 1998 — May 1998

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Motion *in Limine*

United States v. Palumbo Bros., Inc, No. 96-CR-613, 1998 WL 67623 (N.D. Ill. Feb. 3, 1998) (unpublished) — Apr. 1998

Motion for Return of Seized Property

United States v. Ruedlinger, No. 97-40012-01-RDR, 1997 WL 808662 (D. Kan. Dec. 15, 1997) (unpublished) — Mar. 1998

The court granted the Government's motion as to the (l)(6)(A) claim, but denied it as to the (l)(6)(B) theory. With respect to the first theory, the court agreed with the Government that the purchase money was the defendant's property, not the employee's. Because, at the time of the transaction, the defendant was engaged in racketeering activity that rendered all of its assets subject to forfeiture, the money in its bank account, and any property traceable to it (the condominium), were already forfeitable to the Government under the relation back doctrine before any money was withdrawn from the account. Because any interest the employee acquired in the money (or the condominium) occurred *after* the property became subject to forfeiture, the employee could not state a claim under section (l)(6)(A).

With respect to subsection (l)(6)(B), the Government conceded that a person who receives funds from a defendant during the time the defendant is committing criminal acts is protected from forfeiture by the bona fide purchaser provision. In other words, the bona fide purchaser provision cancels out the effect of the relation back doctrine. *See* 18 U.S.C. § 1963(c). But in this case, the Government argued, the employee could not be considered a bona fide purchaser because he was a convicted defendant in a related case, and was named as a participant in several of the acts of racketeering constituting the defendant's RICO offense.

The court acknowledged the strength of the Government's argument, but held that a person's status as a co-defendant was not sufficient, as a matter of law, to negate a bona fide purchaser defense under subsection (l)(6)(B). For purposes of a motion to dismiss, the factual allegations set forth in a petition filed in the ancillary proceeding must be assumed to be true. Because the employee denied that he had any knowledge that the money in the defendant's bank account was subject to forfeiture, he had stated a valid claim under subsection (l)(6)(B). His status as a convicted defendant who may well have had knowledge of his employer's illegal acts was a factual issue that the Government would have to assert in an evidentiary hearing or in a motion for summary judgment. —*SDC*

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Amjad Awan), ___ F. Supp. ___, No. 91-0655 (JHG), 1998 WL 199700 (D.D.C. Apr. 16,1998). Contact: AFMLS Assistant Chief Stefan D. Cassella, CRM20(scassell), or AUSA Robert Dalton, ATXE01(bdalton).

Comment: The claimant in this case testified in a related criminal case under a grant of immunity. One of his objections to the criminal forfeiture was that the Government used his immunized testimony to obtain the forfeiture order. In an earlier decision in the same case, the district court held that it must conduct a *Kastigar* hearing to determine if that was the case. *United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Amjad Awan)*, 980 F. Supp. 529 (D.D.C. 1997). The Government moved for reconsideration of that decision, arguing that the criminal forfeiture order applied to the defendant, not the claimant, and that therefore the use of the claimant's immunized testimony to obtain the forfeiture order would be irrelevant.

In the instant decision, the court, without discussion, stated that the Government's arguments "have merit" and granted the motion for reconsideration. In light of its disposition of the Government's motion to dismiss on the merits, the court felt it unnecessary to address the *Kastigar* issue any further. —*SDC*

Pre-judgment Interest

United States v. $133,735.30 Seized From U.S. Bancorp Brokerage Account, ___F. 3d. ___, No. 97-35267, 1998 WL 125047 (9th Cir. Mar. 23, 1998) — Apr. 1998

Probable Cause

- ***United States v. U.S. Currency ($199,710.00)***, No. 96-CV-241 (ERK) (RML) (E.D.N.Y. Mar. 20, 1998 — May 1998

United States v. 657 Acres of Land in Park County, 978 F. Supp. 999 (D. Wyo. 1997) — Jan. 1998

United States v. 863 Iranian Carpets, 981 F. Supp. 746 (N.D.N.Y. 1997) — Jan. 1998

United States v. $13,570.00, No. CIV-A-97-1997, 1997 WL 722947 (E.D. La. Nov. 18, 1997) (unpublished) — Jan. 1998

United States v. $14,876.00, No. CIV-A-97-1967, 1997 WL 722942 (E.D. La. Nov. 18, 1997) (unpublished) — Jan. 1998

- ***United States v. $40,000 in U.S. Currency***, ___ F. Supp. ___, No. CIV-97-1911 (SEC), 1998 WL 139514 (D.P.R. Mar. 11, 1998) — May 1998

United States v. $86,020.00 in U.S. Currency, ___F. Supp.___, No. 96-CV-125-TUC-ACM, 1997 WL _____ (D. Ariz. Nov. 12, 1997) — Feb. 1998

United States v. $201,700.00 in U.S. Currency, No. 97-0073-CIV-HIGHSMITH (S.D. Fla. Jan. 5, 1998) (unpublished) — Feb. 1998

- ***United States v. $206,323.56 in U.S. Currency***, 989 F. Supp. 1465 (S.D.W. Va. 1998) — May 1998

United States v. One 1980 Cessna 441 Conquest II Aircraft, ___ F. Supp. ____, No. CIV-97-2539, 1997 WL 81703 (S.D. Fla. Dec. 16, 1997) — Mar. 1998

United States v. Real Property Located at 22 Santa Barbara Drive, 121 F.3d. 719 (9th Cir. 1997) (unpublished) (Table) — Mar. 1998

United States v. Akins, ___F. Supp. ___, No. 3:97-00068, 1998 WL 84597 (M.D. Tenn. Feb. 23, 1998) — Apr. 1998

Post and Walk

United States v. 408 Peyton Road, 112 F.3d 1106 (11th Cir. 1997), *reh'g en banc ordered*, 133 F.3d 1378 (11th Cir. 1998) — Feb. 1998

Proceeds

United States v. Jarrett, 133 F.3d 519 (7th Cir. 1998) — Feb. 1998

Summary Judgment / Probable Cause

- **Government's motion for summary judgment granted where Government established probable cause that money seized from automobile had a substantial connection with illegal drug trafficking and where claimant offered no supporting evidence that money was legitimate.**

- **Even if seizure were illegal, Fourth Amendment does not require dismissal of forfeiture action.**

A deputy sheriff pulled over Claimant for speeding. When Claimant stepped out of the automobile to look for the registration, the sheriff noticed a large bulge in Claimant's front pocket. Fearing for his personal safety, the officer frisked Claimant and found a large amount of cash. Thereafter, Claimant consented to a dog sniff of the car.

The dog discovered a bag in the tailgate of the car which was found to contain a large amount of currency in rubber-banded bundles. Two loaded semi-automatic weapons and a small baggie of marijuana were also found. Claimant attempted to flee, but was apprehended. Later, a passenger in the car told police that Claimant had been buying drugs in Florida and selling them in Cleveland for over two years, and that Claimant had lots of cash, cars and houses, but without an apparent job. Based on this evidence, the Government filed a forfeiture action against the cash.

Claimant moved to dismiss the forfeiture action on the ground that the search and seizure were illegal. He also claimed that the money came from a legitimate source. The Government argued alternatively that the seizure was not illegal, but even if it were, the Fourth Amendment would not necessarily require dismissal of the forfeiture action. Noting that the Fourth Circuit had not addressed the issue of requiring dismissal, the district court stated that it would follow other circuits and hold that illegal seizure itself does not preclude forfeiture. The court also held that the seizure of the cash was not unlawful.

Finally, the court held that the Government had established probable cause that the money had a substantial connection with illegal drug trafficking, and was thus subject to forfeiture. Despite Claimant's explanation that the money was from employment, lottery winnings and legalized gambling, the Claimant failed to provide the court with evidence supporting that explanation. Accordingly, the court held that there was no genuine issue of fact for trial and granted the Government's summary judgment motion. —*JRP*

United States v. $206,323.56 in U.S. Currency, ___ F. Supp. ___, No. Civ. A. 6:97-0635, 1998 WL 139520 (S.D. W. Va. Mar. 23, 1998). Contact: AUSA Betty Pullin, AWVS01(bpullin).

Conflict of Interest / Parallel Proceedings

- **Second Circuit says the same law firm should not represent a criminal defendant and a third-party claimant in a related civil forfeiture, absent a waiver of any conflict of interest.**

The Government filed a criminal action against a defendant in an alien smuggling case and a parallel civil forfeiture against the automobile that was used to commit the offense. The same law firm represented

Right to Counsel

United States v. Salemme, 985 F. Supp. 197 (D. Mass. 1997) — Feb. 1998

RICO

United States v. DeFries, 129 F.3d 1293 (D.C. Cir. 1997) — Jan. 1998

Rule 41(e)

- ***Corinthian v. United States***, No. CV-96-945 (CPS) (E.D.N.Y. Mar. 17, 1998 (unpublished) — May 1998

In the Matter of the Seizure of One White Jeep Cherokee, ___ F. Supp. ___, No. 4-97-M-0212, 1998 WL 25685 (S.D. Iowa Jan. 20, 1998) — Mar. 1998

In re: U.S. Currency, $844,520.00 v. United States, 136 F.3d 581 (8th Cir. 1998) — Apr. 1998

United States v. Moloney, 985 F. Supp. 358 (W.D.N.Y. 1997) — Feb. 1998

- ***United States v. Mulligan***, ___ F.R.D. ___, No. 88-CR-90020, 1998 WL 113322 (E.D. Mich. Mar. 13, 1998) — May 1998

Rule 48(a)

United States v. Ruedlinger, Nos. 97-40012-01-RDR, 1997 WL 808662 (D. Kan. Dec. 15, 1997) (unpublished) — Mar. 1998

Safe Harbor

Lopez v. First Union National Bank, 129 F.3d 1186 (11th Cir. 1997), *rev'g* 931 F. Supp. 86 (S.D. Fla. 1996) — Jan. 1998

Section 1983

- ***McFadden v. County of Nassau***, No. CV-97-4146, 1998 WL 151419 (E.D. N.Y. Mar. 26, 1998) (unpublished) — May 1998

Section 2255

- ***United States v. Martinson***, No. CIV-97-3030, 1998 WL 11801 (E.D. Pa. Mar. 4, 1998) (unpublished) — May 1998

Section 853(a)

United States v. Holmes, 133 F.3d 918 (4th Cir. 1998) (Table) — Mar. 1998

because the statute of limitations barred the Government from initiating a civil forfeiture action against the property. —*HSH*

United States v. Mulligan, ___ F.R.D. ___, No. 88-CR-90020, 1998 WL 113322 (E.D. Mich. Mar. 13, 1998). Contact: AUSA J. King, AMIE02(jking).

Rule 41(e) / Statute of Limitations

■ **Statute of limitations applicable to Rule 41(e) petitions is six years under 28 U.S.C. § 2401. Ignorance of the applicable statute of limitations is not a ground for relief under Rule 60(b).**

A *pro se* petitioner filed a Rule 41(e) motion for the return of property seized by the Drug Enforcement Administration in 1988. The district court dismissed his motion. Thereafter, the petitioner filed a motion for relief from that judgment under Fed. R. Civ. P. 60(b), which permits the court to vacate a final judgment where, for example, mistake or excusable neglect has occurred or where new evidence has been discovered. That motion, however, was also denied.

The court dismissed the Rule 41(e) petition as time-barred by the applicable six-year statute of limitations, 28 U.S.C. § 2401. In his Rule 60(b) motion, petitioner sought relief on a variety of grounds, including his and his lawyer's ignorance of the law in delaying the initial filing of his Rule 41(e) petition, his *pro se* status as an incarcerated plaintiff, newly discovered evidence and the doctrine of laches.

The court rejected each of these claims. First, the court noted that in the Rule 60(b) motion, the petitioner did not claim that mistake or excusable neglect had prevented him from presenting evidence in opposition to the United States' defense that his original Rule 41(e) petition was time-barred. Rather, the petitioner argued simply that mistakes or neglect explained the initial delay in filing the Rule 41(e) petition. The court stated that this argument should have been made earlier, but was not. In any event, however, the court noted that erroneous advice of counsel cannot toll the statute of limitations, stating that ignorance of the applicable statute of limitations is not the kind of mistake or excusable neglect contemplated in Rule 60(b).

The court also dismissed petitioner's argument that he now had additional facts that were not before the court when it dismissed the Rule 41(e) petition initially. The court noted that this argument was simply a reargument of petitioner's claims of attorney error.

Lastly, the court noted that the petitioner had misunderstood the doctrine of laches, which is an equitable defense and not a means to avoid the applicable statute of limitations. In the instant case, the doctrine of laches did not apply. —*JRP*

Corinthian v. United States, No. CV-96-945 (CPS) (E.D.N.Y. Mar. 17, 1998) (unpublished). Contact: AUSA Michael Goldberger, ANYE12(mgoldber).

Stay Pending Appeal

United States v. $13,570.00, No. CIV-A-97-1997, 1998 WL 37519 (E.D. La. Jan. 29, 1998)(unpublished)
Mar. 1998

United States v. $14,876.00, No. CIV-A-97-1967, 1998 WL 37522 (E.D. La. Jan. 29, 1998)(unpublished)
Mar. 1998

United States v. 1993 Bentley Coupe, No. CIV-A-93-1282, 1997 WL 803914 (D.N.J. Dec. 30, 1997) (unpublished)
Mar. 1998

Sting Operation

United States v. All Funds on Deposit, No. CIV-A-97-0794, 1998 WL 32762 (E.D. La. Jan. 28, 1998) (unpublished)
Mar. 1998

Structuring

United States v. Funds in the Amount of $170,926.00, 985 F. Supp. 810 (N.D. Ill. Nov. 25, 1997)
Jan. 1998

Substitute Assets

- ***United States v. Berg***, ___ F. Supp. ___, No. 97-CRIM-0866 (LAK), 1998 WL 161008 (S.D.N.Y. Apr. 7, 1998)
May 1998

United States v. Parise, No. 96-273-01, 1997 WL 431009 (E.D. Pa. July 15, 1997) (unpublished)
Jan. 1998

United States v. Gotti, ___F. Supp. ___, No. 98-CR-42(BDP), 1998 WL 116631 (S.D.N.Y. Mar. 12, 1998)
Apr. 1998

Summary Judgment

United States v. $86,020.00 in U.S. Currency, ___F. Supp.___, No. 96-CV-125-TUC-ACM, 1997 WL _____ (D. Ariz. Nov. 12, 1997)
Feb. 1998

United States v. $201,700.00 in U.S. Currency, No. 97-0073-CIV-HIGHSMITH (S.D. Fla. Jan. 5, 1998) (unpublished)
Feb. 1998

- ***United States v. $206,323.56 in U.S. Currency***, ___ F. Supp. ___, No. CIV-A-6:97-0635, 1998 WL 139520 (S.D.W. Va. Mar 23, 1998)
May 1998

Ivester v. Lee, ___ F. Supp. ___, No. 4:96-CV-1807, 1998 WL 34865 (E.D. Mo. Jan. 26, 1998)
Mar. 1998

Circuit recently ruled in *Small* that the appropriate remedy for inadequate notice was a hearing on the merits. The court found that, in the two cases in which administrative forfeitures were vacated for deficient notice after the statute of limitations had run, both courts had ruled that the appropriate remedy was a hearing on the merits notwithstanding the expiration of the statute of limitations. *See Boero*, 111 F.3d at 307; *United States v. Marolf*, 973 F. Supp. 1139, 1151 (C.D. Cal. 1997) (summarized in the August 1997 issue of the *Quick Release*). In the absence of any contrary authority, the court followed *Boero* and *Marolf* and ruled that it would consider the merits of the case to determine whether the seized money should be forfeited or returned.

—JHP

Kadonsky v. United States, No. CA-3:96-CV-2969-BC, 1998 WL 119531 (N.D. Tex. Mar. 6, 1998) (unpublished). Contact: AUSA Brock Stevenson, ATXND01(bstevens).

Res Judicata

- **Civil action against seizing agency to recover forfeited property is barred by *res judicata* where the plaintiff's claim in an earlier civil forfeiture was denied on the merits.**

- **Dismissal of a civil forfeiture claim for failure to comply with Rule C(6) is a judgment on the merits for *res judicata* purposes.**

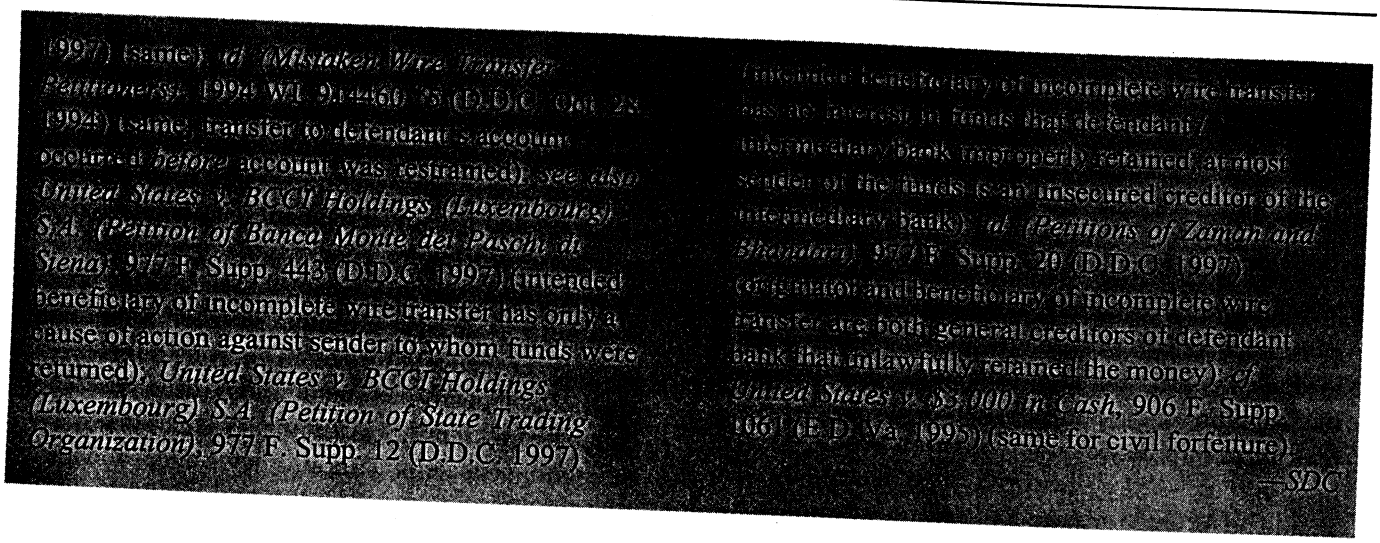
Appellants were brothers of a convicted drug trafficker who purchased several dairy farms as well as animals and farming equipment with proceeds from the illegal drug trade. The Government filed two separate in rem civil forfeiture proceedings against this property. In the first civil forfeiture action, U.S. marshals served both of the brothers with the pleadings. In response, the brothers filed claims requesting protection of their alleged interests in the defendant properties and an answer to the Government's complaint. The district court judge dismissed their claims because they failed to file their claims within the 10-day claim period and their answer within the 20-day answer period established in Rule C(6) of the Supplemental Rules for Certain Admiralty and Maritime Claims. This ruling was affirmed on appeal.

In the second civil forfeiture proceeding, U.S. marshals served the brothers with the pleadings a few days after the filing of the action. One of the brothers failed to respond within the statutory limits. The other never filed either a claim or an answer. Consequently, the district court dismissed their claims, finding that the brothers lacked standing to challenge the forfeiture of the properties. Despite these judgments against them, the brothers filed the instant action against the Drug Enforcement Administration (DEA), claiming an interest in the forfeited properties. The district court dismissed their complaint on DEA's motion for summary judgment. The **First Circuit** affirmed.

The panel noted that, under the doctrine of "claim preclusion," a claim is precluded if three requirements are met: (1) a final judgment on the merits in an earlier action; (2) a sufficient identity between the parties in the two suits; and (3) a sufficient identity of the causes of action in the two suits. It noted that the brothers did not dispute the presence of the second and third elements of claim preclusion in this case but argued instead that in the prior proceedings they did not have a full and fair opportunity to have their claims adjudicated on the merits.

Alphabetical Index

The following is an alphabetical listing of cases that have appeared in the *Quick Release* during 1998. The issue in which the case summary was published follows the cite.



1997) (same); *cf. Mistaken Wire Transfer Payments*, 1994 WL 911460 *5 (D.D.C. Oct. 28, 1994) (same, transfer to defendant's account occurred *before* account was restrained); *see also United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Banca Monte dei Paschi di Siena)*, 977 F. Supp. 443 (D.D.C. 1997) (intended beneficiary of incomplete wire transfer has only a cause of action against sender to whom funds were returned); *United States v. BCCI Holdings (Luxembourg) S.A. (Petition of State Trading Organization)*, 977 F. Supp. 12 (D.D.C. 1997) (intended beneficiary of incomplete wire transfer has no interest in funds that defendant / intermediary bank improperly retained; at most sender of the funds is an unsecured creditor of the intermediary bank); *cf. Petitions of Zamon and Shomber*, 957 F. Supp. 20 (D.D.C. 1997) (originator and beneficiary of incomplete wire transfer are both general creditors of defendant bank that unlawfully retained the money); *cf. United States v. $5,000 in Cash*, 906 F. Supp. 306 (E.D. Va. 1995) (same for civil forfeiture).

—*SDC*

Section 2255 / Attorneys' Fees

■ **District court rejects notion that privately retained defense attorney must offer to forfeit his fee to secure a lesser sentence for his client in order to avoid a conflict of interest.**

Defendant filed a section 2255 petition asserting that his defense attorney had a conflict of interest. The alleged conflict was that the attorney could have agreed to forfeit his fee in order to secure Defendant a lesser sentence in his criminal case. The district court denied the petition.

If this situation were truly a conflict of interest, the court said, then every paid defense attorney in every criminal forfeiture case would be disqualified, and every defendant would have to be represented by the public defender. That is not the law, the court held, at least where there is no showing that forfeiture of the attorney's fee would have resulted in a lesser term of incarceration.

—*SDC*

United States v. Martinson, No. CIV-97-3030, 1998 WL 111801 (E.D. Pa. Mar. 4, 1998) (unpublished). Contact: AUSA Emily McKillip, APAE02(emckilli).

Comment: The court's suggestion that the attorney might have had a conflict of interest if an agreement to forfeit his fee would have resulted in a lesser term of incarceration for his client poses the parallel ethical issue of whether it would have been appropriate for the prosecutor to seek such an agreement in connection with a plea. The relevant Department of Justice policy restricts the use of forfeitable or nonforfeitable assets (including forfeitable and nonforfeitable attorneys' fees) as bargaining tools for negotiating pleas. In short, the policy prohibits the prosecutor from offering to dismiss criminal charges or to reduce the term of incarceration in return for the forfeiture of property. It also prohibits the prosecutor from offering to forego the forfeiture of property in order to coerce a guilty plea. *See Asset Forfeiture Policy Manual* (1996), Chap. 3, Sec. I.A.6, at p. 3 — 5.

If the attorney's fee is a forfeitable asset, it should be forfeited, but not in connection with a plea agreement concerning the attorney's client. Linking the forfeiture of the attorney's fee to plea

United States v. $86,020.00 in U.S. Currency, ___F. Supp.___, No. 96-CV-125-TUC-ACM, 1997 WL _____ (D. Ariz. Nov. 12, 1997) Feb. 1998

United States v. $133,735.30 Seized From U.S. Bancorp Brokerage Account, ___F. 3d. ___, No. 97-35267, 1998 WL 125047 (9th Cir. Mar. 23, 1998) Apr. 1998

United States v. $189,825.00 in United States Currency, No. 96-CV-1084-J (N.D. Okla. Feb. 11, 1998) (unpublished) Apr. 1998

United States v. $201,700.00 in U.S. Currency, No. 97-0073-CIV-HIGHSMITH (S.D. Fla. Jan. 5, 1998) (unpublished) Feb. 1998

United States v. $206,323.56 in U.S. Currency, ___ F. Supp. ___, No. CIV-A-6:97-0635, 1998 WL 139520 (S.D.W. Va. Mar 23, 1998) May 1998

United States v. Akins, ___F. Supp. ___, No. 3:97-00068, 1998 WL 84597 (M.D. Tenn. Feb. 23, 1998) Apr. 1998

U.S. v. All Assets of Revere Armored, Inc., 131 F.3d 132, 1997 WL 794460 (2d Cir. 1997) (unpublished) (Table) Feb. 1998

United States v. All Funds in "The Anaya Trust" Account, No. C-95-0778, 1997 WL 578662 (N.D. Cal. Aug. 26, 1997) (unpublished) Jan. 1998

United States v. All Funds on Deposit, No. CIV-A-97-0794, 1998 WL 32762 (E.D. La. Jan. 28, 1998) (unpublished) Mar. 1998

United States v. An Antique Platter of Gold, Civ. No. 95-10537, 1997 WL 812174 (S.D.N.Y. Nov. 14, 1997) (unpublished) Jan. 1998

United States v. Any and All Funds, No. C-97-931R (W.D. Wash. Apr. 1, 1998) May 1998

United States v. Berg, ___ F. Supp. ___, No. 97-CRIM-0866 (LAK), 1998 WL 161008 (S.D.N.Y. Apr. 7, 1998) May 1998

United States v. Barnette, 129 F.3d 1179 (11th Cir. 1997) Jan. 1998

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Bank Austria), ___F. Supp. ___, No. 91-0655, 1998 WL 87418 (D.D.C. Feb. 23, 1998) Apr. 1998

United States v. BCCI Holdings (Luxembourg) S.A. (Petition of Amjad Awan), ___ F. Supp. ___, No. 91-0655 (JHG), 1998 WL 199700 (D.D.C. Apr. 16, 1998) May 1998

United States v. Colon, ___F. Supp. ___, No. CRIM-94-366(PG), 1998 WL 81633 (D.P.R. Feb. 20, 1998) Apr. 1998

United States v. Contents of Brokerage Account No. 519-40681-1-9-524, No. M9-150, 1997 WL 786949 (S.D.N.Y. Dec. 23, 1997) (unpublished) Feb. 1998

U.S. Department of Justice
Criminal Division
Asset Forfeiture and Money Laundering Section

Quick Release

A Monthly Survey of Federal Forfeiture Cases

Volume 11, Number 5 **May 1998**

Money Laundering / Probable Cause / Standing

- **If the Government has probable cause to believe that a bank account is used exclusively for money laundering, it does not have to establish a separate money laundering nexus for each deposit into the account.**

- **Claimant who transferred money to a bank account no longer has title to the money and therefore lacks standing to contest the forfeiture; it makes no difference that the account was frozen by the Government when the deposit was made.**

In the course of a money laundering investigation, the Government established probable cause to believe that a certain bank account was being used to launder drug money, and that all of the money in the account was involved in the money laundering offense. Based on this probable cause, agents obtained an arrest warrant *in rem* and served it on the bank, thus, freezing the account; the warrant, however, directed the bank to allow additional deposits to be credited to the account for a period of eight days. The day after the seizure, Claimant transferred $270,000 to the seized account.

The Government's section 981 forfeiture complaint sought forfeiture of all of the money in the account, including the $270,000. Claimant filed a claim asserting: (1) that the Government lacked probable cause to forfeit the $270,000 that was deposited after the seizure; and (2) that as to that money, she was an innocent owner of funds that came from a legitimate source. The Government responded that its probable cause evidence applied to all money in the bank account, and that in any event Claimant lacked standing to contest the civil forfeiture action. In a lengthy, well-researched opinion, a magistrate judge agreed with the Government and recommended that the Government's motion to dismiss the claim be granted.

On the first point, the court held that, if the Government's evidence established probable cause to believe that *all* of the money in a bank account is involved in a money laundering offense, the Government is not required to establish a separate basis for forfeiture of a particular sum of money that came from a particular source or was deposited at a particular time. In this case, there was ample evidence that drug dealers were using the subject bank account repeatedly and over an extended period of time to launder drug proceeds, and that all